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REMARKS

Claims 1 and 3 are amended and claim 2 is canceled herein. Claims 1 and 3-39 will be pending upon entry of the amendment.

The following remarks are responsive to the Office action dated June 30, 2004.

Claim 1

Claim 1 as amended herein is directed to an absorbent article comprising:

a) an outer cover adapted to stretch upon application of a load by a first amount;

b) a liquid and gas permeable bodyside liner defining a bodyfacing surface and being generally superposed and coextensive with the outer cover, the bodyside liner being adapted to stretch upon application of the load by a second amount;

c) an absorbent body located between the bodyside liner and the outer cover and generally movable with the outer cover upon stretching of the outer cover; and

d) said first amount of stretch of the outer cover being greater than said second amount of stretch of the bodyside liner whereby a gap is formed between the bodyside liner and the absorbent body facilitating the flow of air and vapor through the bodyside liner in a loaded condition of the absorbent body, the bodyside liner being relatively more resilient when stretched than the outer cover.

Claim 1 as amended is submitted to be unanticipated by and patentable over the references of record, and in particular U.S. Patent Nos. 4,895,568 (Enloe) and 6,702,801 (Van Gompel et al.), in that whether considered alone or in combination the

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references fail to disclose or suggest an absorbent article having a stretchable outer cover and a stretchable liner, with the liner and outer cover having a differential stretch upon application of a load to the article, and wherein the liner is more resilient than the outer cover upon stretching.

Enloe discloses a diaper liner with selectively elasticized portions. The diaper includes a backsheet layer, a substantially liquid-permeable liner layer, and an absorbent body located between the backsheet and liner layers. A resilient barrier section 11 is located on either the outward facing side or the body facing side of the liner layer.

Enloe fails to disclose altogether that the backsheet layer of the diaper is stretchable as recited in amended claim 1. Applicants respectfully note that the Office action makes conflicting characterizations regarding this feature. That is, at item 3, page 3, first paragraph of the Office action, the Office action takes the position that Enloe discloses an outer cover adapted to stretch upon application of a load by a first amount. However, on page 4 of the Office action at the paragraph regarding claim 2 the Office action positively recognizes that Enloe fails to disclose that the backsheet is extensible. Nor does Enloe disclose or suggest that the backsheet may be elastic. If the backsheet of Enloe is not extensible or elastic then it cannot be stretchable as asserted by the Office in rejecting claim 1.

Because Enloe fails to disclose the outer cover being stretchable, Enloe cannot anticipate amended claim 1.

Van Gompel et al. disclose an absorbent garment that has a liquid permeable topsheet, a retention portion, and an extensible backsheet. Van Gompel et al. disclose that the

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backsheet can alternatively be made of an elastic material capable of recovering the size and shape thereof after deformation, and/or exhibiting a retractive force. The topsheet is disclosed by Van Gompel et al. (at column 6, line 65 through column 7, line 37) as being, in various embodiments, made of extensible materials similar to those from which the backsheet is constructed. Notably, while Van Gompel et al. disclose that the backsheet may alternatively be elastic, Van Gompel et al. lack any disclosure that the topsheet may be elastic.

Thus, Van Gompel et al. teach that the backsheet must be at least extensible, and may be elastic; and the topsheet may be inextensible or it may be extensible. There is no teaching or suggestion that the topsheet may be elastic. As a result, there is no combination of backsheet and topsheet construction disclosed by Van Gompel et al. wherein upon stretching the topsheet is more resilient than the backsheet as recited in amended claim 1. For example, where the backsheet is extensible and the topsheet is inextensible, Van Gompel et al. fails to disclose a stretchable topsheet. Where the backsheet is extensible and the topsheet is extensible, neither the topsheet nor the backsheet is resilient, and in any event the topsheet cannot be said to be more resilient than the backsheet upon stretching. Where the backsheet is elastic and the topsheet is extensible, the backsheet is clearly more resilient than the topsheet. Thus, Van Gompel et al. fail to show or suggest an absorbent article having a stretchable outer cover and a stretchable liner, with the liner and outer cover having a differential stretch upon application of a load to the

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article, and wherein the liner is more resilient than the outer cover upon stretching.

Thus, claim 1 as amended cannot be anticipated by Van Gompel et al.

The other references of record similarly fail to show or suggest all of the features recited in amended claim 1.

For these reasons, claim 1 as amended herein is submitted to be unanticipated by and patentable over the references of record.

Claims 3-22 depend directly or indirectly from claim 1 and are submitted to be patentable over the references of record for the same reasons as claim 1.

Claim 23

Claim 23 is directed to an absorbent garment for capturing human waste when worn. The garment comprises:

a) a liquid impermeable outer cover adapted to stretch upon application of a load by a first amount;

b) a liquid and gas permeable bodyside liner generally superposed and coextensive with the outer cover, the bodyside liner being adapted to stretch upon application of the load by a second amount, the bodyside liner comprising

a sheet of liquid and gas permeable material defining a bodyfacing surface, and

plural cords of resilient elastic material on a side of the sheet opposite the bodyfacing surface, the cords applying a resilient force in opposition to stretching of the sheet;

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c) an absorbent body located between the bodyside liner and the outer cover and generally movable with the outer cover upon stretching of the outer cover; and

d) said first amount of stretch of the outer cover being greater than said second amount of stretch of the bodyside liner whereby a gap is formed between the bodyside liner and the absorbent body facilitating the flow of air and vapor through the bodyside liner in a loaded condition of the absorbent body.

Applicants note that in item 2 of the Office action, the phrase "Claims 1 are rejected" is used. Applicants are unsure whether only claim 1 stands rejected as being anticipated by Van Gompel et al., or whether additional but unidentified claims were also intended to be rejected. It appears from the discussion that follows the rejection that claims 3 and 22 were also rejected. It does not appear that claim 23 was rejected as being anticipated by Van Gompel et al. In any event, Van Gompel et al. clearly fail to show or even suggestion plural cords of resilient elastic material on a side of the sheet opposite the bodyfacing surface, the cords applying a resilient force in opposition to stretching of the sheet.

As discussed above in connection with claim 1, Enloe discloses a diaper liner with selectively elasticized portions. The diaper includes a backsheet layer, a substantially liquid-permeable liner layer, and an absorbent body located between the backsheet and liner layers. A resilient barrier section 11 is located on either the outward facing side or the body facing side of the liner layer. However, Enloe fails to make any disclosure or suggestion that the backsheet layer is stretchable as recited in claim 23. Applicants again note that

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at page 4 of the Office action the Office recognizes Enloe's failure to disclose an extensible or elastic (i.e., stretchable) outer cover.

Thus, claim 23 cannot be anticipated by Enloe.

The other references similarly fail to show or suggest all of the features recited in claim 23.

For these reasons, claims 23 is submitted to be unanticipated by and patentable over the references of record.

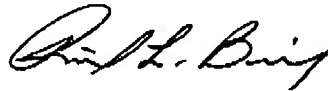
Claims 24-39 depend directly or indirectly from claim 23 and are submitted to be patentable over the references of record for the same reasons as claim 23.

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CONCLUSION

In view of the foregoing, favorable consideration and allowance of claims 1 and 3-39 as now presented is respectfully requested. The Commissioner is hereby authorized to charge any fee deficiency in connection with this Amendment A to Deposit Account Number 19-1345 in the name of Senniger Powers.

Respectfully submitted,



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